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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,382	08/05/2003	Joel R. Warner	WJRA-10002/01	8157

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EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/634,382	Applicant(s) WARNER, JOEL R. <span style="float: right;">ST</span>	
	Examiner Son T. Nguyen	Art Unit 3643	

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-7,9-11,14-18,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7,9-11,14-18,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 2-6,9-11,16-18,21,22** are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2311923A (herein 923) in view of JP355093751A (herein 751).

For claim 21, 923 discloses a method for covering vegetation in a cold or windy environment such that the vegetation is protected from frost, comprising the steps of: providing an area of earth having vegetation disposed therein; providing a blanket 2 for placement over the vegetation, the blanket including a sheet of material having an interior area, piping 40,45,43,44 extending around portions of the perimeter of the material and a weight 55,60 disposed within the piping; and positioning the blanket over the vegetation, whereby the weight disposed within the piping functions to restrain the movement of the cover. However, 923 is silent about the piping extending continuously around the entire perimeter of the material and into the interior area.

751 teaches a cover sheet with piping (see fig. 3) extending along two edges of the perimeter and to the interior area of the sheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend piping along two additional edges and to the interior area as taught by 751 in the method of 923 in order to further prevent the blanket from blowing away in the event the coverage area is

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large. Note, 923 teaches piping along what appears to be the length of the blanket and 751 teaches piping in the interior area and along the width of the sheet.

For claim 22, a cover for vegetation for use in cold or windy environments such that the vegetation is protected from frost comprising: a blanket 2, the blanket including a sheet of synthetic material having an interior area, a perimeter edge, a plurality of micro-perforations (fleece material have micro-perforations cause it is porous between the fibers) and piping that extends portions of the perimeter of the material; and a weight 55,60 positioned within the piping to restrain the movement of the cover when the cover is in position over the vegetation. However, 923 is silent about the piping extending continuously around the entire perimeter of the material and into the interior area.

751 teaches a cover sheet with piping (see fig. 3) extending along two edges of the perimeter and to the interior area of the sheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend piping along two additional edges and to the interior area as taught by 751 in the cover of 923 in order to further prevent the blanket from blowing away in the event the coverage area is large. Note, 923 teaches piping along what appears to be the length of the blanket and 751 teaches piping in the interior area and along the width of the sheet.

For claim 2, 923 as modified by 751 (emphasis on 923) discloses the vegetation is from crops.

For claim 3, 923 as modified by 751 (emphasis on 923) discloses the sheet being a textile material (page 3, lines 15-17).

For claim 4, 923 as modified by 751 (emphasis on 923) discloses the sheet being a synthetic material (page 3, lines 15-17).

For claim 5, 923 as modified by 751 (emphasis on 923) discloses the synthetic material being a polymeric material such as polythene (page 3, line 16).

For claim 6, see explanation for claim 22 for micro-perforation.

For claims 9 & 11, 923 as modified by 751 (emphasis on 923) discloses the weight being a flexible weight (page 4, lines 25-2).

For claim 10, 923 as modified by 751 (emphasis on 923) discloses the flexible weight being a fluid (such as water).

For claims 16-18, see claims 9-11 for explanation.

3. **Claims 7 & 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over 923 as modified by 751 as applied to claims 21,22 above, and further in view of US 5058317 (herein 317).

For claim 7, 317 teaches a mulch collar comprising a sheet of material to cover plants, the material being colored black (col. 5, lines 49-52) for sunlight absorption and warming the plants. It would have been obvious to one having ordinary skill in the art at the time the invention was made to color the sheet black as taught by 317 in the method of 923 as modified by 751 in order to absorb sunlight and thus, warm the plants.

For claim 14, 317 teaches a mulch collar comprising a sheet of material to cover plants, the material being colored black (col. 5, lines 49-52) for sunlight absorption and warming the plants. It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to color the sheet black as taught by 317 in the cover of 923 as modified by 751 in order to absorb sunlight and thus, warm the plants.

4. **Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over 923 as modified by 751 as applied to claim 22 above, and further in view of US 3862876 (herein 876). 876 teaches a cover 25 with piping 31,28a,29a,26,28,30 staggered around the perimeter edge of the cover (fig. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the piping staggered around the perimeter edge as taught by 876 of the cover of 923 as modified by 751 in order to allow insertion of individual weight 28 as needed (col. 2, line 45 of 876).

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 2-7,9-11,14-18 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
September 9, 2004